A. P. 75 & 76—600,414—21-11-31.

19

Department of Land Rev & Sett

OFFICE Board of Rev.

STATION madras.

Mis No. 1571

1571

Dated 25-5-32

To whom sent

Given for copying

Copied

Examined

Signed

Given for despatch

Despatched

Indexed

Pages in the File

To be destroyed on

DESPATCHED
25 MAY 1932

28/5

(SUBJECT)

Suit (South Kanara) - Udipi Dt Municipl
Con 27/32 - Loans - A. d. Act -
Priority of mortgage over Govt. loan - Depn
Sanctioned

Sir,

Suits (South Kanara) - Udipi - District Munsif's Court O.S.No.27/32 Advances - Loans - Priority of mortgage over Government loan.

I enclose a copy of the plaint in the above suit, which is for a decree by sale of the plaint properties for the realisation of the amount of mortgage due to the plaintiff from the 1st defendant free from certain alienations, including a mortgage in favour of Government for a loan obtained by the 1st defendant.

2. The loan in question, viz., Rs.400/- was granted by the Special Tahsildar in charge of Loans work on 22.3.1924 to the ---- 1st defendant for the reconstruction of his house in S.No.10/7 of Baikadi village, Udipi Taluk, which was damaged by flood, under the Agriculturists' Loans Act, XII of 1884, on he security of hi lands S.Nos.10/7 of Baikadi village (referred to above) & 94/24C o Uppur village. Subsequent to this grant of the loan, the loanee sold the properties to on Sankaya Shetti, nephew of the 3rd defe dant and he, the purchase executed a fresh security bond on 14t June 1927 in favour of Government in respect of the same property In the first place, it may be said that the plaintiff did not in this case give me the usual notice required by Sec. 80 C.P.C.

3. The mortgage in favour of the plaintiff was effected 14.8.1920, while the loan was granted only on 22.3.1924, i.e. more than three years and a half after the mortgage in favour of the plaintiff. It will be seen from the loan records themselves Udipi Taluk office file L.O.121/1333 (enclosed) that when the Government loan was granted, it was known to the authorities that the properties offered as security had a previous encumbrance in favour of the present plaintiff to the extent of Rs.1545/- including the arrears of interest due on the principal of Rs.1300 All the same, the loan was granted because the properties were then valued at Rs.2800/-. The loan was made repayable in ten equal annual instalments of Rs.49-5-1 each, of which seven have already been paid. Only three more instalments, the first of which fell due on 10.4.1932, remain to be realised.

I am also of the opinion that the loan in the present case being one granted under the Agriculturists Loans Act, the Government is not entitled to claim a priority in respect thereof and the loan given by the Government, in the present case, is subject to previous encumbrances. I am also of opinion that paragraphs 6 and 7 of the draft written statement require some modification. The revised written statement is sent herewith.

Connected papers are herewith returned.

Your obedient servant,

(Sd) B.M.Hegade,
Government Pleader.

The Plaintiff above named begs to state as follows:

I Plaintiff

Kajake Krishtraya Kamath is the son of Kaike Annappa Kama residing in Kajke Nalkur village, Sooral Magane, Udipi Taluk.

The above is Plaintiff's address for service.

II.Defendants.

1. David Rusario Louis son of Paul Klement Louis.
2. Juam Permal Louis Bai wife of Airody Silvester Rudrig and daughter of 1st Defendant.
3. Madagada Nagayyayys Shetty nepnew or Surappa Shetty.
4. Kollu Shedthi.
5. Kanaka Shedthi. } daughters of Madagada
6. Akkamma Shedthi } Durgi Shedthi.

Defendants 1

(f) Amount due to the Plaintiff is detailed herebelow.

(g) Subsequent to the plaint mortgage 1st Defendant has sold the plaint property to one Madagada Sankaya Shetty nephew of 3rd Defendant and brother of Defendants 4 to 6 directing him to pay off the plaint mortgage. He paid some interest and has not paid the principal or the balance of interest in spite of registered notice sent to him on 12-6-29 calling upon him to _ _ _ by 14-8-29. He accepted the said notice the entire mortgage amount and paid only Rs. 100 towards interest through one Kajke Madhava Kamath on 9-12-30 and has not paid the balance. He died about 6 months ago --- leaving Defendants 3 to 6 are his legal representatives who are now in possession of all his assets including the plaint property. Defendants 1 and 2 appear to have obtained back the plaint------- property on mulgeni from the said Sankaya Shetty. Neither the sale of Sankaya Shetty nor the mulgeni in favour of in favour of Defendants 1 and 2 is binding on the Plaintiff who is the prior mortgagee. Plaintiff is entitled to recover his dues by the sale of the plaint property free from the said sale or mulgeni or any other objection on their behalf. Hence they are impleaded in this suit.

favour of the Defendants for the following sums of money and costs of the suit with interest and for further interest on the aggregate from this date until realization at 6% and also for a personal decree for the balanc

1.) 14.8.20 ನೇ ಸಾಲಿನ ಪ್ರತಿವಾದಿಯು ವಾದಿಗೆ ರೂ. ಐದು ಲಕ್ಷಗಳ ಅಡಮಾನ ಪತ್ರ.
(1) Mortgage deed (ಅಡಮಾನ ಪತ್ರ) dated 14.8.20 by Deft-1 to plaintiff

2) 12.6.29 ನೇ ಸಾಲಿನ ಪ್ರತಿವಾದಿಯು ವಾದಿಯ ಋಣ ತೀರಿಸಿದ್ದಕ್ಕೆ
(2) Receipt ಅಂತ dated 12.6.29 sent by plaintiff to Defendant

(2)(a) — ಇ —
200 — ನ —

3) 14.6.29. — ಇ — ಇ — ವಾ.ವಿ.
(3) — ಪತ್ರ — ಸಂ. — acknowledgment dated 14.6.29

4) 10.7.13. ಮೇಲ್ಕಂಡ ಸಾಕ್ಷಿಯಂತೆ ನಿ, ನೇ ಪ್ರತಿವಾದಿ ಕುರಿತಾದ
(4) Statement ಪತ್ರವು 10.7.13 by plaintiff & Others to Chan
ಸಿಂಧ್ಯ ಅವರಿಗೆ.

Bhagi Amma

The 7th defendant abovenamed begs to state as follow:

~~1. That the address of this defendant is as stated i~~ the plaint.

~~That~~ the suit of the plaintiff a against this defendant ~~is unmaintainable at~~ law ~~and on merits.~~

~~That the suit as against this defendant~~ is wholly bad for want of notice to this defendant under section 80 of the C.P.Code. viz.. Act V of 1908 ~~The suit as against this defendant~~ is accordingly liable to be rejected under Order VII, Rule 11 of the said Code.

Without prejudice to the above contention, this defendant submits that the plaint properties were mortgaged by the 1st defendant to this defendant on 22-3-1924 for -- Rs. 400/ which were advanced by this defendant to the 1st defendant for the purpose of enabling the latter to build a house on the plaint 1st item of lands under the Agriculturists

This defendant submits that for the sum thus due to the Government from the 1st defendant: as specified -- hereunder and also for future interest thereon till payment a proper provision may be made in the decree to be passed in the above suit and a decree passed according to the pro visions of law, providing for payment of the amounts of principal and interest due to this defendant from out of the surplus of the sale proceeds after satisfying the plaint mortgage

Subject.

Suit - (South Kanara) - Udipi -
Dt Munsiff's Court - O.S 27/32-
Loans - H. A. Act - Priority of
mortgage over Govt. loan - Defence
Saved

by the Collr has been
slightly revised by ~~esched~~ omitting
some annexy details. Par
of the Collr's w.s. may also
be deleted as the prayer
asked for therein - viz -
provision for recovery of
the balance on annual
instalments might
embarrass Govt if summar
recovery were to become neces

KG
19.V.82

The 7th defendant abovenamed begs to state as

1. The suit of the plaintiff as against this efendant is not maintainable in law. It is holly bad for want of notice to this defendant nder section 80 of the C.P.Code, Viz., Act V of

It is accordingly liable to be rejected Order VII, Rule 11 of the said Code.

2. Without prejudice to the above contention, his defendant submits that the plaint properties ere mortgaged by the 1st defendant to this -- efendant on 23-3-1924 for Rs. 400/- which was dvanced by this defendant to the 1st defendant or the purpose of enabling the latter to build house on the plaint 1st item of lands under the Agriculturists' Loans Act and was repayable in ten annual instalments of Rs. 49-5-1/ each. The 1st defendant has put up a pucca house on the plaint 1st item of lands with the loan obtained by him from this defendant.

due to this defendant under principal is Rs. ———

with interest at ——— per cent from ———

till date of payment.

4. This defendant denies the truth of the other allegations in the plaint not expressly traversed herein, in so far as they are against this defendant.

5. This defendant submits that this written statement is filed in this suit without prejudice to his right to realise the amounts due to him from 1st defendant by summary procedure as provided by law.

6. This defendant therefore prays that in the event of a decree being passed in the above suit, a decree may also be passed in favour of this defendant providing for the payment

How is it that there is no allusion to Sankarya Shetti in the written statt. the property has been sold to him & Govt have got a mortgage deed from him. when a fresh mortgage deed has been taken in 1st diff. st still have to repay the loan to Govt?

Ken
19.5.32

To ask Secy
Resubmitted

2. The bond executed by Sankayya Shetti - pp. 53-54 of (V) — the purchaser of the hypothecated lands is in the nature of a surety bond and as the wording of the bond implies the liability of the original borrower for the dues payable to Govt still continues

9.5.32 19.V.32